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IN THE

Supreme Court of the United States

October Term, 1973
No. 72-6403

ALVERA M. ALDABE,

Petitioner,

vs.

CHARLES D. ALDABE, WILHELMINA S. LINDQUIST and RENEE L. KENNEDY,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of California.

Brief of Respondents Wilhelmina S. Lindquist and Renee L. Kennedy in Opposition.

Question Presented.

1. Whether petitioner was denied due process of law in contravention of the Fourteenth Amendment to the Constitution in not being furnished, at public expense, with transcripts of the proceedings had before the trial court in this civil case costs on appeal before the appellate Courts of the State of California, and the free legal services to assist her in perfecting her appeal.

Preliminary Statement.

This divorce litigation has been pending for over *thirteen years.* In its odyssey through the courts of Nevada and California it has engaged the attention of the highest courts of both states, has been before the intermediate appellate court of California on four separate occasions, and the principal issues were once submitted to the United States Supreme Court on a petition for writ of certiorari, which was denied (393 U.S. 1042).

It is our contention, and our strong belief, that all of the viable issues of the case have been fully and fairly considered and decided, and that there are no federal questions remaining which are entitled to the attention of this Court.

The Facts.

The instant petition for certiorari misstates the facts in several particulars. We must, therefore, attempt to set matters straight. While this is somewhat difficult to do without a record, the opinion of the Nevada Supreme Court in *Aldabe v. Aldabe* (1968) 84 Nev. 392, 441 P.2d 691, contains a fairly complete statement of the facts up to the date that the opinion was filed. A copy of that opinion is attached as Appendix A. This is the decision which this Court declined to review on Mrs. Aldabe's previous petition for certiorari. (393 U.S. 1042). For additional facts we have of necessity referred to documents filed or received in evidence in the several court proceedings herein involved.

The essential facts are these: Charles and Alvera Aldabe were married October 5, 1941, in Nevada. They resided on a ranch in Nevada until August, 1942,

when he bought a ranch (the Flynn Ranch) through which runs the California-Nevada state line. They lived on that ranch until their separation in 1959. The house in which they lived was on the California part of the ranch. As detailed in the opinion of the Nevada Supreme Court, they continued to consider themselves as residents and domiciliaries of Nevada, and to act accordingly.

This litigation was commenced on July 13, 1959, in the District Court of Washoe County, Nevada. The complaint for divorce was signed and verified by Alvera M. Aldabe. She alleged that she was a resident of Nevada. She personally appeared in court on September 25, 1959, with her Nevada attorney (Streeter) when preliminary matters relating to custody of children and support *pendente lite* were argued. Then, apparently dissatisfied with what had transpired in Nevada (the rulings on the preliminary matters did not give her all that she asked for), she filed a second suit for divorce on November 9, 1959, this time in California through a California attorney (Smith), alleging residence in California. On November 13, 1959, she appeared in Streeter's office in Reno and verified an answer to her husband's counterclaim to her Nevada complaint.

After filing the answer to the counterclaim in the Nevada divorce suit, Mrs. Aldabe abandoned that suit, allowing it to go to trial on April 28, 1960, without taking any effective steps to protect her interests. Judgment was entered April 29, 1960, awarding a divorce to Mr. Aldabe and determining that the Flynn Ranch and other property was his separate property.

Mrs. Aldabe has since claimed that she did not have notice of this trial. There is substantial evidence

that she and Smith, her California attorney, did have actual notice of the trial. That she deliberately chose to ignore what was going on in Nevada is demonstrated by an affidavit she signed on April 25, 1960, and filed in the California action on May 6, 1960, in which she stated, under oath:

> "That plaintiff, upon advice of counsel, did initiate a proceeding in the State of Nevada for a divorce, but that plaintiff abandoned said proceeding upon discovery that the advice of counsel that she had the right to initiate such action in Nevada was erroneous; that plaintiff thereupon notified her attorney in Nevada in writing that he was discharged and should no longer represent her in said action but that despite such notice said attorney, together with defendant's attorney in Nevada, have continued to prosecute said action with the intent of depriving plaintiff of the right of having her rights adjudicated in the state having jurisdiction thereof; . . .
>
> "That plaintiff has retained Thomas W. Martin, Attorney at Law, Sacramento, California, to . . . resist defendant's efforts to deprive plaintiff of her legal rights by the spurious suit in the State of Nevada; . . ."

Mrs. Aldabe did not appeal from the judgment in the Nevada divorce suit, nor attempt to do so.

On November 28 and 29, 1960, the California court heard Mr. Aldabe's motion to vacate a previous order for temporary alimony and child support. The Court decided that the Nevada judgment was entitled to full faith and credit and granted the motion. Thereafter, on stipulation that the issues be submitted on

the evidence submitted at the hearing, judgment was entered in favor of the husband.

Shortly after entry of this judgment, and with knowledge thereof, respondents Lindquist and Kennedy bought the Flynn Ranch from Mr. Aldabe, taking an indemnification agreement against any claim to the property by Mrs. Aldabe.

On Mrs. Aldabe's appeal from the California judgment, the California Court of Appeal reversed (*Aldabe v. Aldabe* (1962) 209 Cal. App. 2d 453, 26 Cal. Rptr. 208), instructing the trial Court to make inquiry into Mrs. Aldabe's claims that the Nevada court lacked jurisdiction and that by reason of extrinsic fraud she was denied the opportunity to appear and defend the Nevada action.

Armed with the decision of the California Court of Appeal, Mrs. Aldabe went back to Nevada and filed two new lawsuits, one to vacate and set aside the Nevada judgment, and the other seeking damages against Mr. Aldabe and several attorneys and others involved in the Nevada divorce suit. The Nevada action to vacate was based on allegations that the Nevada court lacked jurisdiction, and that by reason of extrinsic fraud she was prevented from appearing in and defending the Nevada divorce action. These allegations were decided against her by the trial court in the Nevada action to vacate, and by the Nevada Supreme Court on appeal. *Aldabe v. Aldabe* (1968) 84 Nev. 392, 441 P.2d 691. Mrs. Aldabe's petition for certiorari was denied by this Court. 393 U.S. 1042.

Undeterred by that adjudication of the issues, Mrs. Aldabe presented them again in the trial of the California divorce action. After a trial lasting for 26 court

days, in which the allegations of lack of jurisdiction and extrinsic fraud were fully presented and considered, the California trial court held that it was bound to give full faith and credit to the decisions of the Nevada courts in both the Nevada divorce action and the Nevada action to vacate, and it rendered judgment that the Aldabes' marriage had been terminated by the Nevada decree, that the property rights of the spouses were as determined by the Nevada decree. The Judgment also quieted the title to the Flynn Ranch as being in respondents Kennedy and Lindquist.

After requesting not only the usual clerk's and reporter's transcripts, but transcripts of all of the earlier hearings and motions in the California proceeding, Mrs. Aldabe failed to deposit the necessary funds to cover the costs of preparing such transcripts, but instead asked the Court to order the transcripts paid for out of funds deposited with the Court by respondents Lindquist and Kennedy on account of the purchase price of the Flynn Ranch or from public funds. This motion was denied. A motion to dismiss the appeal was then filed by respondents Lindquist and Kennedy. No response being made within the time allowed by Rule 41 of the California Rules of Court, the appeal was dismissed. However, on Mrs. Aldabe's plea that she was unaware of Rule 41, the dismissal was set aside and a hearing held before the Court of Appeal on December 20, 1971. After that hearing the appeal was dismissed, on December 31, 1971. A petition for hearing by the Supreme Court of California was denied on March 8, 1972.

Mrs. Aldabe also filed a Petition for Extraordinary Relief in the Nature of Mandamus in the California Court of Appeal (*Aldabe v. Superior Court* (Sierra), 3

Civil 13350) wherein she sought an order of the Court of Appeal directing Sierra County to furnish her at public expense a clerk's and a reporter's transcript in her California divorce suit. The Court denied that petition on December 31, 1971, at the same time it dismissed the appeal on the merits. The re-remittitur went down on March 31, 1972.

Mrs. Aldabe then attempted to present a petition for a Writ of Certiorari and for a Writ of Prohibition to this court. Without waiting for notice that the petition had been docketed a brief in opposition was filed by respondents, to the granting of such writs. Not hearing from this Court as to the docketing of the case, inquiries were made by telephone as to the status of the matter. In a conversation with Mr. Frank Lorsen of the Clerk's office on June 15, 1972, and in a conversation with Mr. E. C. Schade, Assistant Clerk in charge of docketing on June 26, 1972, we were advised that Mrs. Aldabe's papers had been returned to her on April 25, 1972 (apparently because of her failure to comply with the Supreme Court Rules), and that there was nothing before this court. It was also pointed out that the 90-day period for filing had expired. The brief in opposition was returned.

Prior to notice of Mrs. Aldabe's first petition of March, 1972, for a writ of certiorari in this court, and after receipt of notice of the remittitur, the law firm of Schei, Fort, Taylor & Pendergast, in the person of Robert A. Fort, filed a post judgment motion to determine additional attorneys' fees, costs, and expenses on March 22, 1972, and a hearing was held in the Superior Court, County of Sierra, at Downieville, California, on April 11, 1972, requesting the court to make an order allocating the funds on deposit with the court.

No appearance was made by Mrs. Aldabe after notice had been duly given, although we were advised that Mrs. Aldabe had telephoned the court. The Court decreed that the funds on deposit with the Court were allocated in accordance with the judgment of the Court of March 15, 1971, as modified by the Court's order of April 12, 1972, which had then become final.

On June 15, 1972, Mrs. Aldabe filed another notice to prepare clerk's transcript *in forma pauperis* and requested once again the records, transcripts, motions, etc. of, not only the motion of the firm of Schei, Fort, Taylor & Pendergast of April 11, 1972, but for the entire case, contending that her constitutional right had been infringed and requesting appointment of counsel, and public payment of appeal costs. Hearing was held in the Superior Court on Mrs. Aldabe's motion, and her petition was denied.

Mrs. Aldabe then filed a motion for relief from default in failure to pay estimated costs on appeal in the Third Appellate District, where her motion was likewise denied on October 26, 1972.

Mrs. Aldabe thereupon filed a five-page, single-spaced letter with the District Court of Appeal, the Honorable Frank Richardson, asking for a rehearing, and again seeking to reopen her entire case. Said petition was likewise denied on November 22, 1972.

Mrs. Aldabe now comes to this honorable court again seeking Certiorari, and claiming that she has somehow preserved her rights to re-petition after this court returned her petition of last year, and claiming again the right in this civil case to appeal costs and counsel at public expense, and again seeking to reopen the case.

ARGUMENT.

The crucial fact in the foregoing recital is that all of the issues which petitioner seeks to have re-adjudicated in the California courts *have been* adjudicated not just once but twice in the courts of Nevada, and in such a way that the courts of California have no choice but to give full faith and credit to those adjudications pursuant to Article IV, Section 1 of the Constitution of the United States of America.

In the first Nevada action petitioner herself invoked the jurisdiction of the Nevada courts to decide four issues: divorce, custody and support of children, spousal support and title to and division of the property of the spouses. Those issues were decided in that action and the judgment therein became final.

Whether or not California was bound to give full faith and credit to that first Nevada judgment (a question which could be argued at great length here, and which has been considered at great length and decided adversely to petitioner in the latest phase of the California action), there is no room for doubt that the judgment in the second Nevada suit, the action to vacate, must be given full faith and credit in California.

There can be no question that petitioner invoked the jurisdiction of the Nevada courts in the Nevada action to vacate, nor that the Nevada courts had jurisdiction to decide the questions raised in that action. No question has been or could be raised that any extrinsic fraud was involved in that action. Thus the decision therein was entitled to full faith and credit after it

became final; and it did become final after affirmance by the Nevada Supreme Court (*Aldabe v. Aldabe* (1968) 84 Nev. 392, 441 P.2d 691) and the denial of certiorari by this Court. (393 U.S. 1042).

The judgment in the Nevada action to vacate established that the Nevada court had jurisidction in the earlier Nevada divorce suit and that the judgment therein was not tainted by fraud. At that point, if not before, the judgment in the Nevada divorce action was entitled to full faith and credit as to all issues decided therein.

While the questions of jurisdiction and fraud have been raised, contested and decided in the forum state, the judgment there becomes *res judicata* on those points and is entitled to full faith and credit in the courts of other states.

Stoll v. Gottlieb (1938) 305 U.S. 165;
Davis v. Davis (1938) 305 U.S. 32;
Sherrer v. Sherrer (1948) 334 U.S. 343;
Coe v. Coe (1948) 334 U.S. 378;
Johnson v. Muelberger (1951) 340 U.S. 581;
Cook v. Cook (1951) 342 U.S. 126;
Durfee v. Duke (1963) 375 U.S. 106, 111.

California cases to the same effect include:

Perkins v. Benguet Cons. Min. Co. (1942) 55 Cal. App. 2d 720, 132 P.2d 70, cert. den. 319 U.S. 774;

Tompkins v. Tompkins (1948) 89 Cal. App. 2d 243, 200 P.2d 821;

Lewis v. Linder (1963) 217 Cal. App. 2d 150, 31 Cal. Rptr. 563, 564;

Santiferro v. Collins (1967) 250 Cal. App. 2d 203, 58 Cal. Rptr. 219;

See also: *Whealton v. Whealton* (1967) 67 Cal. 2d 656, 663, 432 P.2d 9.

All of the substantial issues involved in the California litigation were fully and finally resolved in the Nevada actions, and the California trial court had no alternative but to give full faith and credit to the judgments in those actions, and it did. Under these circumstances any money spent for transcripts of the 26-day trial would be wasted, and opposing parties and the courts would be put to unnecessary effort and expense.

If it should be decided that due process requires that the public pay for transcripts and perhaps other expenses of civil litigation for those unable to pay such expenses themselves, it would seem that such assistance should not be made available in such a case as this. If transcripts are to be furnished at public expense in cases where there is nothing left to decide, there will be no case where this kind of assistance can be denied, and there will be a proliferation of frivolous and useless appeals and a severe and unnecessary drain on the public treasury.

The time limit established by 28 U.S.C. 2101(c) and Rule 22(3) of the Supreme Court Rules would appear to preclude further consideration of the case by the

United States Supreme Court, at least insofar as the matters concerning the judgment of March 15, 1971.

The judgment entered March 15, 1971, is beyond further direct or collateral attack in any court. It has, therefore, been finally adjudicated that Mrs. Aldabe has no interest in the Flynn Ranch or in the money paid by respondents on account of the purchase of that ranch.

Inasmuch as Mrs. Aldabe had previously requested the public to pay for transcripts and other expenses on her earlier appeal, and since the California courts have denied this request, and since she has failed to make a timely appeal for a Writ of Certiorari as to those issues, they, likewise, are *res judicata*.

Therefore, it has been finally adjudicated that Mrs. Aldabe has no interest in the Flynn Ranch, nor in the moneys paid by these respondents on account of the purchase of that ranch. That issue was decided adversely to Mrs. Aldabe. Therefore, she had no interest in the disposition of that money under the minute order dated April 13, 1972, and she never did have any interest in the amount owed these respondents by Mr. Aldabe under the indemnification agreement, which was the subject of the hearing of April 11, 1972, and the order dated April 12, 1972, and entered April 13, 1972.

Since she has no standing to appeal the order rendered April 12 and 13, 1972, no useful purpose could be achieved for granting her request for free transcripts or legal counsel at public expense for the April 11, 1972, hearing.

CONCLUSION.

The petition for a Writ of Certiorari should be denied. All of the substantial issues of this case were settled when this Court denied the Writ of Certiorari to the Nevada Supreme Court in 1968 (393 U.S. 1042).

It was decided that Mrs. Aldabe had no interest in the subject matter of the post judgment orders of the Court of April 12 and 13, 1972, from which she is seeking certiorari. She has, therefore, no standing to appeal from those orders and, therefore, no useful purpose could be achieved by granting her request for free legal counsel and transcripts.

While these respondents do not argue that the Courts are without power, in certain deserving cases, to require free transcripts to be furnished indigent civil litigants, respondents do maintain most urgently, due to the points hereinabove argued, that this case is not one which such relief should have been granted by this Court. It would appear to respondents that the present inherent powers of the Court should not be saddled with a mandatory ruling requiring free legal services and appeal costs to all indigent litigants. This would appear to be a function of the legislature. Indeed, under the present 1966 act, Economic Opportunity Act (80 Stat. 1451), certain qualified litigants are afforded publicly financed counsel in civil cases. To make such a ruling mandatory by declaring all litigants, regardless of merit of their cases and without restraint, to be entitled to free and exhaustive access to appellate courts at no expense to them and by means

of publicly financed counsel would appear to these respondents to be beyond the rights insured under the Constitution of the United States and, indeed, an encouragement to flood the courts with cases pressed by every indigent whose case was fortified more with bare determination than with legal merit.

These respondents are entitled to due process also, and that should mean they are entitled to have this litigation brought to a close, particularly when all issues presented by this petitioner have already been exhaustively litigated.

To quote from an opinion of this Court in a case involving similar issues:

> "It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has had his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."
>
> *Stoll v. Gottlieb* (1938) 305 U.S. 165, 172.

Dated: April 13, 1973.

RONALD T. GOLAN,
Attorneys for Respondents, Wilhelmina S. Lindquist, and Renee L. Kennedy.

HARRY K. MULHOLLAND,
Of Counsel.

APPENDIX A.

Opinion of the Supreme Court of the State of Nevada.

In the Supreme Court of the State of Nevada.

Alvera M. Aldabe, Appellant, v. Charles D. Aldabe, Robert Taylor Adams, Jack Streeter, and David Evans, Respondents.

No. 5304

Alvera M. Aldabe, Appellant, v. Charles D. Aldabe, Respondent.

No. 5305

[Filed June 7, 1968].

Appeal from summary judgment refusing to set aside divorce decree and appeal from judgment dismissing complaint for damages, Second Judicial District Court, Washoe County; John E. Gabrielli, Judge.

Affirmed.

Martillaro & Bucchianeri, of Carson City, and *Albert E. Polonsky,* of San Francisco, California, for Appellant.

Donnell Richards, of Reno, for Charles D. Aldabe.

Goldwater, Taber and *Hill,* of Reno, for Robert Taylor Adams.

Sidney W. Robinson, of Reno, for Jack Streeter.

Paul A. Richards, of Reno, for David Evans.

By the Court, Zenoff, *J.:*

Alvera Aldabe appeals from judgments entered in two cases below which have been consolidated for the purposes of this appeal. In her suit to set aside the divorce decree obtained by Charles Aldabe the trial court granted summary judgment declaring the decree to

be valid in all respects. In a second suit for damages the trial court entered judgment dismissing her entire complaint. We affirm both decisions of the lower court.

Alvera originally filed the divorce complaint as plaintiff in which she alleged Nevada residence. Almost immediately she became dissatisfied with her Nevada attorney and started the same proceeding in California claiming that state as her residence. Her husband, Charles, answered and counterclaimed in the Nevada action. Certain preliminary proceedings relating to temporary support and custody thereafter took place. Through a California attorney Alvera notified her Nevada attorney that she no longer wanted him to represent her. Nevertheless, despite this notification, she thereafter personally appeared in his office in Reno to verify her reply to Charles' counterclaim in the Nevada action indicating thereby that he still represented her and that she continued to seek affirmative relief as stated in her initial complaint.

A period of time passed wherein she and her Nevada counsel did not contact each other. A hearing date was set for the Nevada divorce, but Alvera denies knowing of it. However, her Nevada counsel appeared, informed the court the circumstances of his relationship with his client, that he had been advised by her California counsel that they were not going to personally appear and make any effort to contest the counterclaim, that therefore he was not in a position to cross-examine or present any evidence. The divorce action proceeded with the court hearing evidence in support of Charles' counterclaim and a decree was entered. There are clear indications that Alvera knew of the Nevada divorce proceeding and certainly had actual knowledge of it when it was set up in bar in her California action.

Yet, she took no steps in Nevada to contest it or to set it aside. The California trial court accepted the Nevada decree in bar, but the California District Court of Appeal, Third District, Aldabe v. Aldabe, 209 Cal. App.2d 453, 26 Cal.Rptr. 208 (1962), reversed on the ground that the trial court in granting summary judgment in favor of Charles erroneously denied admission of certain evidence proffered by Alvera seeking to test the jurisdictional facts upon which the Nevada decree was based. Accordingly, a new trial was ordered. The Court of Appeal, taking the evidence most favorable to Alvera, stated that it was possible that a material jurisdictional fact had been kept from the Nevada trial judge and because of this the Nevada court did not have jurisdiction to hear the divorce. Consequently, they indicated the decree to be invalid. The key fact that was allegedly withheld from the Nevada trial judge according to the California court was that the dwelling house of the parties was in California, not Nevada.

The ranch actually lies partly in California and partly in Nevada and in all is only a few miles from Reno, but the dwelling and outbuildings are on the California side. Since the parties dwelled in the abode, said the California court, they were California residents, not Nevadans. Exhaustive statements of facts appear in the California case previously cited and also Aldabe v. Adams, 81 Nev. 280, 402 P.2d 34 (1965), and need not be repeated here. Instead, we first direct our attention to the question of the residential requirements of a divorce litigated in our court, because unquestionably the California decision encourages Alvera to seek to set aside the Nevada decree. Consistent with the California ruling her contention is that the Nevada court had no jurisdiction and the divorce was invalid. Our lower court

in proceedings that predicated this appeal ruled otherwise.

1. The location of the buildings on the ranch property are incidental only in the consideration of all of the factors going to make up the residence. Residence is synonymous with domicile and it is consonant with the many decisions of our court that the *fact* of presence together with *intention* comprise bona fide residence for divorce jurisdiction. Whise v. Whise, 36 Nev. 16, 131 P. 967 (1913); Fleming v. Fleming, 36 Nev. 135, 134 P. 445 (1913); Tiedemann v. Tiedemann, 36 Nev. 494, 137 P. 824 (1913), also concurring opinion of Talbot, J.; Worthington v. District Court, 37 Nev. 212, 142 P. 230 (1914); State v. Moran, 37 Nev. 404, 142 P. 534 (1914); Presson v. Presson, 38 Nev. 203, 147 P. 1081 (1915); Aspinwall v. Aspinwall, 40 Nev. 55, 160 P. 253 (1916); Merritt v. Merritt, 40 Nev. 385, 160 P. 22, rehearing 40 Nev. 392, 164 P. 644 (1917); Blakeslee v. Blakeslee, 41 Nev. 235, 168 P. 950 (1917); Walker v. Walker, 45 Nev. 105, 198 P. 433 (1921); Barber v. Barber, 47 Nev. 377, 22 P. 284 (1924); McLaughlin v. McLaughlin, 48 Nev. 155, 238 P. 402 (1925); Confer v. District Court, 49 Nev. 18, 234 P. 688, rehearing 49 Nev. 26, 236 P. 1097 (1925); Lewis v. Lewis, 50 Nev. 419, 264 P. 981 (1928); Latterner v. Latterner, 51 Nev. 285, 274 P. 194 (1929); Hunnewell v. Hunnewell, 55 Nev. 150, 27 P.2d 1062 (1934); Prouse v. Prouse, 56 Nev. 467, 56 P.2d 147 (1936); Lamb v. Lamb, 57 Nev. 421, 65 P.2d 872 (1937); Wilson v. Wilson, 66 Nev. 405, 212 P.2d 1066 (1949); Blouin v. Blouin, 67 Nev. 314, 218 P.2d 937 (1950); Plunkett v. Plunkett, 71 Nev. 159, 283 P.2d 225 (1955); Weinstein v. Weinstein, 74 Nev. 40, 321 P.2d 245

(1958); Moore v. Moore, 75 Nev. 189, 336 P.2d 1073 (1959); Sutherland v. Sutherland, 75 Nev. 304, 340 P.2d 581 (1959); Baker v. Baker, 76 Nev. 127, 350 P.2d 140 (1960).

The trial courts of this state were satisfied that the Aldabes were Nevada residents. Charles Aldabe came to Nevada in 1918 as an infant. From that time to the present he has never been a resident of any state but Nevada. He always either lived in Reno or worked on ranches near Reno during his boyhood until he and Alvera married in 1941. Together they lived on his father's ranch in Washoe County until 1942 when he purchased the Flynn ranch which is the property located in both Nevada and California. In spite of the geographical dividing line they obviously continued to consider themselves residents and domiciliaries of Nevada. Their mailing address, voting registration, school attendance, medical care, business and financial affairs, auto and operators' licenses, taxes, wills and employment were all in Nevada. In other manifestations they declared intention of Nevada residence and performed continuous daily activities in Nevada. Alvera was employed in a gaming establishment in Reno, Nevada. She also attended the University of Nevada as a resident of this state. There is nothing in any of the records that speak of any intention to give up their residence as Nevadans to acquire that of any other state. Indeed this was fundamental to the trial court's decision in the original divorce proceedings.[1]

It appears to us with all deference and respect to the California appellate court that they were in some

[1]Corroborating evidence of Charles' residence was supplied by two witnesses who were well acquainted with the Aldabes. NRS 54.010.

measure misinformed by Alvera not only as to her intention that California instead of Nevada was her residence, but also as to the financial circumstances of the parties that led that court to believe that unfair advantage had been taken of her. The implied excoriation of the Nevada attorneys leaves that impression. Yet, while the California court stated, "We have before us the entire record in the Nevada proceedings," no reference was made in that opinion to the fact that Alvera personally verified her reply in the Nevada proceeding. Alvera plainly submitted herself to the Nevada court and it then becomes questionable whether residence was an indispensable prerequisite for jurisdiction. And when both parties are thus before the court it may not be possible to later attack the decree outside the forum state. Cook v. Cook, 342 U.S. 126 (1951); Johnson v. Muelberger, 340 U.S. 581 (1951); Coe v. Coe, 334 U.S. 378 (1948); Sherrer v. Sherrer, 334 U.S. 343 (1948); Whealton v. Whealton, 432 P.2d 979 (Cal. 1967) (dictum).

Nevada has a legitimate interest in the adjudication of the marital status of these parties for their dominant interests were concentrated in this state. Both parties set up conduct taking place in Reno, Nevada, as grounds for divorce. The California District Court of Appeal recognized that Reno was the focal point of this family's interests and activities. Thus, from the affiliating circumstances no compelling reasons appear for this forum to decline jurisdiction for divorce purposes and application of its domestic law. Currie, Suitcase Divorce in the Conflict of Laws: Simons, Rosenstiel and Borax, 34 U.Chi.L. Rev. 26 (1966); Leflar, Conflict of Laws and Family Law, 14 Ark.L.Rev. 47 (1959-1960); von Mehren and Trautman, Jurisdiction to Ad-

judicate: A Suggested Analysis, 79 Harv.L.Rev. 1121, 1135-1179 (1966); Developments-Jurisdiction, 73 Harv.L.Rev. 909, 966-976 (1960).

2. The record before us shows that the Nevada court had jurisdiction based on residence of the parties to enter the decree. However, Alvera's action to set aside the decree not only attacks bona fide residence, but asserts that by conduct amounting to extrinsic fraud she was denied the opportunity to appear and defend the divorce proceeding. This is the essential predicate of her suit to invalidate the decree.

The extrinsic fraud was allegedly the result of concerted efforts of her Nevada attorney, her husband and his attorney, and a witness. These four parties were named as coconspirators in a second suit seeking $1,000,000 in damages. We turn to consider the question of extrinsic fraud.

The record does not substantiate Alvera's contention that she discharged her Nevada counsel, for subsequent to the alleged discharge she verified pleadings in his office and directed that he file the same, nor is there any formal withdrawal or substitution of attorney in the record. Both her Nevada counsel and her California counsel had knowledge of the hearing date. It is elementary that notice to the attorneys is notice to the client. Aldabe v. Adams, supra, p. 286; Zeig v. Zeig, 65 Nev. 464, 198 P.2d 724 (1948). We cannot accept Alvera's assertation that her Nevada counsel's appearance was without authorization, for the contrary is conclusively presumed, Barber v. Barber, supra, as well as established by the record. Furthermore, the rules governing the legal profession in this state provide that once an attorney has appeared in an action he may be

changed upon the application of the attorney or the client with the consequent order of the court, or by stipulation but nothing of that sort was done. SCR 46. Apparently Alvera was aware that some assertive action was necessary if she desired to remove her Nevada attorney from the case for he told the court at the divorce hearing, "I have endeavored to have her appear here or at least substitute counsel for me to appear at this hearing and for the purpose of this trial, but I have been advised by her attorney that they are not going to appear here and make any effort to contest the counterclaim of the defendant."

Alvera invoked the jurisdiction of this forum and was subject to it. Apart from the view that by her conduct she may be estopped from collaterally attacking the decree, Grant v. Grant, 38 Nev. 185, 147 P. 451 (1915), it is clear from the record that no facts establishing extrinsic fraud have been shown as a matter of law.

Alvera played an active role in the original divorce proceeding. She knew the important facts and circumstances upon which she now challenges bona fide residence in Nevada which is explicit in her reply to Charles' counterclaim. It cannot be seriously urged that Alvera did not have the opportunity to consult an attorney of her own selection since her allegations show that she had the advice and assistance of counsel of her choice. Not only did she employ Nevada counsel, but she repeatedly employed various independent California counsel, thus making her no stranger to lawyers.

Through her counsel Alvera had the opportunity to disclose the facts and present her position for adjudication by the court. There were no false promises of compromise nor any other acts or omissions which by design sought to prevent Alvera from ascertaining her rights and defenses or to deny a reasonable opportunity to present them at trial. It is apparent from the evidence that after initiating the divorce action in Nevada, Alvera voluntarily elected to refrain from further participation in the proceeding. Under the circumstances she is charged with the knowledge of the facts which he contends were fraudulently withheld and the obligation to inform the trial court. Though having had the opportunity to do something, Alvera did nothing. Procedural due process was accorded her and extrinsic fraud is not shown. Summary judgment was properly entered declaring the decree valid. Confer v. District Court, supra; Chamblin v. Chamblin, 55 Nev. 146, 27 P.2d 1061 (1934); Lamb v. Lamb, supra; Calvert v. Calvert, 61 Nev. 168, 122 P.2d 426 (1942); Mazour v. Mazour, 64 Nev. 245, 180 P.2d 103 (1947); Murphy v. Murphy, 65 Nev. 264, 193 P.2d 850 (1948); Smith v. Smith, 68 Nev. 10, 226 P.2d 279 (1951); Howard v. Howard, 69 Nev. 12, 239 P.2d 584 (1952); Garteiz v. Garteiz, 70 Nev. 77, 254 P.2d 804 (1953); Villalon v. Bowen, 70 Nev. 456, 273 P.2d 409 (1954); Moore v. Moore, 78 Nev. 186, 370 P.2d 690 (1962); Colby v. Colby, 78 Nev. 150, 369 P.2d 1019 (1962); cf. Manville v. Manville, 79 Nev. 487, 387 P.2d 661 (1963).

Nor do the facts pleaded show that by reason of a conspiracy Alvera was prevented from presenting her case. The trial court correctly dismissed the entire complaint for damages. Wade v. Wade, 41 Nev. 533, 173 P. 553 (1913).

3. Furthermore, from the record it is clear that Alvera's allegation that the value of the ranch and community property exceeds $250,000 is grossly overstated. Nor was she left destitute. The Aldabes led a strictly budgeted existence. The ranching operation was always subject to prior indebtedness to a Nevada livestock association from whom Charles borrowed money constantly over the years for living expenses and to feed the cattle so that when the cattle were marketed the money had to be repaid. Little more than a living was realized even with the assistance of Alvera's income from working. When Alvera refused to continue to live with Charles she retained more than $4,000 accumulated in a savings account.

The record tells a story of continuing, contentious, vexacious, irritating and costly conduct by Alvera resulting in financial hardship to Charles, as well as depriving him of visitation with his daughter who remained with Alvera. Custody of their son had been awarded to Charles.

From the foregoing recitation we agree that the jurisdictional findings in the divorce proceeding which were affirmed by the lower court in this case were proper. Alvera's attempt to set aside the divorce decree contains no issue for further litigation. We reject the con-

tention that there is any conflict creating material issues of fact that must be resolved by the trial court. Judgments were properly entered in favor of the respondents in both cases.

Affirmed.

Thompson, *C. J.*, Collins, Batjer, and Mowbray, *JJ.*, concur.

Note—These printed advance opinions are mailed out immediately as a service to members of the bench and bar. They are subject to modification or withdrawal possibly resulting from petitions for rehearing. Any such action taken by the court will be noted on subsequent advance sheets.

C. R. Davenport, *Clerk.*